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In re Application of :
PAPAIOANNOU *et al* :
U.S. Application No.: 10/549,905 :
PCT No.: PCT/GR2002/000045 :
Int. Filing Date: 22 August 2002 :
Priority Date: 22 August 2002 :
Attorney Docket No.: None :
For: DECORATIVE BALLOON ASSEMBLY :

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47 and 37 CFR 1.137(b) filed 20 September 2005.

BACKGROUND

On 20 September 2005, applicants filed papers to enter the national stage of PCT/GR2002/000045 which were accompanied by, *inter alia*, a petition under 37 CFR 1.137(b) and a \$1,500.00 petition fee; a petition under 37 CFR 1.47(a) and a \$200.00 petition fee; a declaration signed by two of the three named inventors; and a copy of a letter dated 02 September 2005 sent by the nonsigning inventor.

On 16 May 2006, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 and 1.495 (Form PCT/DO/EO/903) and filing receipt indicating that the date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements and date of completion of all 35 U.S.C. 371 requirements is 20 September 2005.

On 07 December 2007, a "Request for Status of Petition and Submission of Copy of the Petition" was mailed.

DISCUSSION

A review of the subject application shows that applicants filed a petition to revive under 37 CFR 1.137(b) and a petition under 37 CFR 1.47(a) with the national stage papers on 20 September 2005. No decision has been made on either petition.

These petitions will be decided in turn.

Petition to Revive Under 37 CFR 1.137(b)

A petition to revive pursuant to 37 CFR 1.137(b) requires: (1) a proper reply, (2)

has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney . . .

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made . . .

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. . . . When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts . . .

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

In this case, the letter by the nonsigning inventor mailed 02 September 2005 does not yet constitute a written refusal to join as there is no evidence that Mr. Tsambaos received a complete copy of the subject application as required. *See above.*

Applicants must provide documentary evidence that a complete copy of the subject application (including specification, claims and drawings) were first presented (or attempted to be presented) to the nonsigning inventor prior to the purported written refusal. For this reason, item (2) of 37 CFR 1.47(a) is not yet satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

The Form PCT/DO/EO/903 mailed 16 May 2006 was sent prematurely and is

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the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Applicants submitted paperwork to enter the national stage of PCT/GR2002/000045 along with the appropriate national stage fees. This is considered an appropriate response. Applicants provided the petition fee of \$1,500.00. Applicants' statement in the petition meets the requirement of 37 CFR 1.137(b)(3). A terminal disclaimer is not required. All items of 37 CFR 1.137(b) have been met.

Applicants' petition to revive under 37 CFR 1.137(b) is **GRANTED**.

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors. Items (1), (3) and (4) are complete.

Concerning item (1), the petition fee has been paid.

With regards to item (3), the last known address of co-inventor Dr. Dionysios Tsambaos is recorded on the declaration as:

University of Patras School of Medicine
Department of Dermatology
P.O. Box 1413, Rio 26504
Patras, Greece

Concerning item (4), the 37 CFR 1.47(a) applicants submitted a declaration signed by two of the three named inventors on behalf of themselves and the nonsigning joint inventor. This declaration meets the requirements of section 409.03(a) and is in compliance with 37 CFR 1.497(a) and (b).

Regarding item (2), applicants submitted a copy of a letter dated 02 September 2005 sent by the nonsigning inventor. A review of the letter shows that the nonsigning inventor has affirmatively rejected joining the subject application. No other evidence was provided.

Applicants' burden in showing that an inventor refuses to cooperate is explained in section 409.03(d) of the MPEP. Several pertinent segments are listed below:

A refusal by an inventor to sign an oath or declaration when the inventor

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hereby **VACATED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "James Thomson". The signature is written in a cursive style with a large initial "J".

James Thomson
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